

# **Who is Responsible for Competition?**

# Two Roles?

- Economic Regulation – usually ex-ante
  - Can be thought of as “**conduct**”
  - Arises from detailed cost-plus rate of return regulation for traditionally monopolistic utilities
  - Information intensive and usually continuous
    - However, multi year regimes (RPI-X) may change this
- Competition Oversight - usually ex-post
  - Cartel formation (“structure”)
  - Abuse of dominant position (“**conduct**”)
    - Cease and desist orders

# Three Options?

- Separation
  - Competition function with the Competition Authority (CA)
  - Economic Regulation with Sector Regulator (SR)
- Integration
  - Economic Regulation with the CA
    - Broad Principles – New Zealand
    - Specific Principles – Australia
- Concurrence
  - Competition Function with both CA and SR
  - Economic Regulation with SR

# Concurrence is common

- Situation that prevails in many countries
  - OECD, Oceania (limited)
  - Latin America, Eastern Europe
  - Asia
- UK has a formal Structure to address this
  - Concurrence Working Party – the “people approach”
  - And a common appellate body on competition matters – Competition Appeals Tribunal
- Elsewhere, laws mandate cross-consultation
  - Call this the “principle approach”?

# India is unique

- Competition Authority with no exclusion for
  - “services of general economic interest”
  - or “revenue generating monopolies”
- Sectoral Regulators with competition mandates
  - Strong for electricity
  - Weak for telecom
- Independent Appellate jurisdictions

# Competition decisions in infrastructure

- Telecom (TRAI)
  - Merger guidelines – spectrum cap of 15 MHz
- Electricity (SERCs)
  - Open access phase in over 5 years
  - Access surcharge
- Ports (not TAMP)
  - Decision to exclude bidders on competition grounds
- Roads
  - The clubbing of toll rights for NH-4 (between Mumbai and Pune) and Mumbai Pune Expressway under one concession
- Water
  - Prevention of groundwater extraction rights to make Tirupur viable / or to preserve environment?

# Cross-sectoral

- Electricity
  - Gas ownership and generation plants
    - Petroleum regulator, ERC or Competition Commission
  - NTPC and market structure
    - The peculiarities of the electricity market in terms of dominant position
- Transport
  - Intermodal competition
    - DTC and DMRC
- Consumer Protection Act
  - If standards for bottled drinking water, why not tap water?
  - Who will monitor? what is the remedy?

# **Finally**

Ownership and regulation